



NEVADA STATE BOARD OF PHARMACY
OFFICE OF THE GENERAL COUNSEL

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September 18, 2019

VIA ELECTRONIC MAIL to 80330-31267315@requests.muckrock.com

Sarah Seymour
MuckRock News
DEPT MR 80330
411A Highland Ave
Somerville, MA 02144-2516

Re: Public Records Request

Dear Ms. Seymour:

This will confirm receipt of your request made to the Nevada State Board of Pharmacy (Board) pursuant to the Nevada Public Records Act (NPRA), NRS Chapter 239, for certain public records relating to the Nevada Prescription Monitoring Program (PMP). Please see the Board's initial responses and clarify your requests as specified below to enable the Board to identify any other records responsive to your request that are subject to disclosure under the NPRA. Please note that the PMP is administered pursuant to NRS 453.162-.165; NRS 639.23507; NAC 453.065-.088.; and NAC 639.926. Data in the PMP is Protected Health Information (45 C.F.R. § 160.103) under the HIPAA Privacy Rule (45 CFR Part 160 & Part 164, Subparts A & E) and NRS 453.164(8)).

When clarifying your requests please note the following: 1) a request made pursuant to the NPRA must be for a readily identifiable record or class of records that exists at the time of the request; 2) a state agency may request additional information or clarification from a requestor to determine which record the person is requesting (NAC 239.865); 3) a state agency is not required to conduct research for a requestor or to create a record that does not exist in order to satisfy a request (NAC 239.867); and 4) a state agency must have legal custody or control of a record in order for it to be subject to disclosure (NRS 239.010). NAC 239.705 further demarcates what constitutes an “official state record” under the NPRA.

The Board's initial responses and requests for clarification are as follows:

1. Any and all records reflecting an agreement for purchase, acquisition, or licensing of, or permission to use, test, or evaluate Appriss's systems or services, including any product or service offered: **Please clarify “Appriss's systems or services, including any product or service offered” and specify a date range.**

2. Any and all memoranda of understanding between the Nevada State Board of Pharmacy and any outside entity regarding the NV PMP Aware: **Please clarify “memoranda of understanding” and “outside entity” and specify a date range.**
3. Any and all records including information about the algorithm that determines risk scores in the NV PMP Aware, including but not limited to its source code, developer documentation, and operator manuals: **Please see <http://bop.nv.gov/links/PMP/> and all records available therein. The Board has no other records responsive to this request.**
4. Any and all research, technical reports, or internal audits that define and/or evaluate the NV PMP Aware effectiveness or performance: **Please clarify “effectiveness or performance” and specify a date range.**
5. Any and all research, technical reports, or internal audits that evaluate the AppriSS risk assessment tool’s effectiveness or performance: **Please clarify “AppriSS risk assessment tool” and “effectiveness or performance” and specify a date range.**
6. Any document containing a full list of the data fields in the NV PMP Aware: **See NAC 639.926.**
7. Any and all records of de-identified red flag algorithm outputs (e.g. provider red flag, pharmacy red flag, 40 MED red flag) and patient behavioral red flags (e.g., anxious patient demeanor, distance between prescriber and dispenser) with prescriber/dispenser training documentation on how to address the red flags: **Please clarify “red flag algorithmic outputs” and specify a date range.**
8. Any record showing the number of patients in the NV PMP Aware by quarter and year (2006-present): **No records responsive to this request are maintained by the Board in the ordinary course of business.**
9. Any record showing the number of prescribers and pharmacists in the NV PMP Aware by quarter and year (2006-present): **No records responsive to this request are maintained by the Board in the ordinary course of business.**
10. Any and all records containing Nevada State Board of Pharmacy analysis of whether and/or how the NV PMP Aware has impacted public health in Nevada (e.g. decrease or increase in overdose rates, “doctor shopping,” prescribing volume, etc.) over time: **All records responsive to this request that are in the legal custody or control of the Board are attached.**
11. Any and all records 2006-present of notification to law enforcement about information in the NV PMP Aware Medical Review Group or other channels, including but not limited to how many times law enforcement agencies have been notified about information in the NV PMP Aware, and which agencies have been notified: **With regard to “Medical Review Group” there is no such entity; law enforcement access to the PMP is pursuant to NRS 453.162-.165 and *Or. Prescription Drug Monitoring Program v. United States DEA*, 860 F.3d 1228 (9th Cir. 2017); no other records responsive to this request are maintained by the Board in the ordinary course of business.**

12. Any and all internal policy, memoranda, and/or training documentation describing how entities outside of Nevada State Board of Pharmacy, including law enforcement, may obtain access to information in the NV PMP Aware, including but not limited to the rules, regulations, and procedures of the Medical Review Group: **With regard to “Medical Review Group” there is no such entity; access to the PMP is pursuant to NRS 453.162-.165 and *Or. Prescription Drug Monitoring Program v. United States DEA*, 860 F.3d 1228 (9th Cir. 2017); please see <http://bop.nv.gov/links/PMP/> and all records available therein.**
13. The legal authorization for sharing NV PMP Aware information with the law enforcement entities: **This is not a request for a public record: law enforcement access to the PMP is pursuant to NRS 453.162-.165 and *Or. Prescription Drug Monitoring Program v. United States DEA*, 860 F.3d 1228 (9th Cir. 2017).**
14. Any and all records showing how often law enforcement entities or individuals have requested information or records from the NV PMP Aware, or made electronic queries of the system, including but not limited to what types of information or records have been requested, which agencies have made the requests, the percent of requests that were accepted versus denied, temporal trends, the form of the request (e.g. subpoena, warrant, etc.), and whether the requests were granted or denied: **No records responsive to this request are maintained by the Board in the ordinary course of business.**

If I can be of any further assistance as you clarify your requests as specified please do not hesitate to contact me at 775-850-1440 or bkandt@pharmacy.nv.gov.

Best regards,



Brett Kandt
General Counsel
Nevada State Board of Pharmacy

Attachment